

City Council Introduction: **Monday**, April 15, 2002  
Public Hearing: **Monday**, April 22, 2002, at **1:30 p.m.**

Bill No. 02R-77

## **FACTSHEET**

**TITLE:** **WAIVER OF DESIGN STANDARDS NO. 02004**, requested by Robert L. Dean of Engineering Design Consultants, on behalf of Pine Lake Development, L.L.C., to waive the dedicated pedestrian way easement on Lots 8 and 9, Block 2, Vintage Heights 7<sup>th</sup> Addition, and on Lots 9 and 10, Block 2, Vintage Heights 6<sup>th</sup> Addition, on property generally located south of Benziger Drive and Blackstone Road.

**STAFF RECOMMENDATION:** Approval.

**ASSOCIATED REQUESTS:** None

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 04/03/02  
Administrative Action: 04/03/02

**RECOMMENDATION:** **Approval** (8-0: Newman, Duvall, Bills-Strand, Steward, Carlson, Krieser, Larson and Schwinn voting 'yes'; Taylor absent).

### **FINDINGS OF FACT:**

1. The staff recommendation to **approve** this waiver request is based upon the "Analysis" as set forth on p.3-4, concluding that while a pedestrian way is necessary in this block, several unusual circumstances make waiving the requirement the only feasible choice.
2. The applicant's testimony is found on p.5.
3. There was no testimony in opposition.
4. On April 3, 2002, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** April 8, 2002

**REVIEWED BY:** \_\_\_\_\_

**DATE:** April 8, 2002

**REFERENCE NUMBER:** FS\CC\2002\WDS.02004

## **LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**P.A.S.:** Waiver of Design Standards #02004

**DATE:** March 13, 2002

**PROPOSAL:** To release the dedicated pedestrian way easement on Lots 8 and 9, Block 2, Vintage Heights 7<sup>th</sup> Addition and on Lots 9 and 10, Block 2, Vintage Heights 6<sup>th</sup> Addition

**LAND AREA:** 2,651 square feet, more or less

**CONCLUSION:** While a pedestrian way is necessary in this block, several unusual circumstances make waiving the requirement the only feasible choice.

<b><u>RECOMMENDATION:</u></b>	Approval
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### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lots 8 and 9, Block 2, Vintage Heights 7<sup>th</sup> Addition and Lots 9 and 10, Block 2, Vintage Heights 6<sup>th</sup> Addition, located in the SE 1/4 of Section 14, T9N, R7E of the 6<sup>th</sup> P.M., Lancaster County, Nebraska.

**LOCATION:** South of Benziger Drive and Blackstone Road

**APPLICANT:** Pine Lake Development, L.L.C.

**OWNERS:** Pine Lake Development, L.L.C. (Lot 8, Block 2, Vintage Heights 7<sup>th</sup>)  
Mark & Renee Halverson (Lot 9, Block 2, Vintage Heights 7<sup>th</sup>)  
Prairie Home Builders Inc. (Lot 9, Block 2, Vintage Heights 6<sup>th</sup>)  
Charles A. Leininger (Lot 10, Block 2, Vintage Heights 6<sup>th</sup>)

**CONTACT:** Robert L. Dean  
EDC  
630 N Cotner Blvd. - Suite 105  
Lincoln, NE 68505  
(402) 464-4011

**EXISTING ZONING:** R-3 Residential

**EXISTING LAND USE:** Single family house on Lot 9, Block 2, Vintage Heights 7<sup>th</sup> Addition. The other three lots are vacant.

**SURROUNDING LAND USE AND ZONING:**

North:	R-3	Residential
South:	R-3	Residential with some vacant lots
East:	R-3	Residential with some vacant lots
West:	R-3	Residential with some vacant lots

**HISTORY:**

<b>May 14, 2001</b>	Planning informed the developer that the Pedestrian Way Easement could be moved to another location via Executive Order. The developer was to contact the City Attorney's office to begin the process. The developer never proceeded to move the easement.
<b>October 20, 2000</b>	Building permit issued on Lot 9, Block 2 Vintage Heights 7 <sup>th</sup> Addition. The plan indicated a 5' setback from the north property line, but the zoning ordinance requires a 10' setback from pedestrian way easements.
<b>June 28, 2000</b>	Planning Commission approved Vintage Heights 7 <sup>th</sup> Addition Final Plat. There is a 10' pedestrian way easement along the property line between Lots 8 and 9, Block 2. Construction of the sidewalk in the easement was required at the time of street paving.
<b>January 26, 2000</b>	Planning Commission approved Vintage Heights 6 <sup>th</sup> Addition Final Plat. The plat depicted a 10' easement along the property line between Lots 9 and 10, Block 2. The easement was not labeled, although the resolution required construction of the sidewalk at the same time as Blackstone Road was paved.
<b>June 16, 1999</b>	The Planning Commission approved the Vintage Heights 2 <sup>nd</sup> Addition Preliminary Plat. The plat showed a pedestrian way easement in what became Lots 9 and 10, Block 2 in Vintage Heights 6 <sup>th</sup> Addition and Lots 8 and 9, Block 2 in Vintage Heights 7 <sup>th</sup> Addition.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan designates this area as Urban Residential.

The overall objectives of the transportation plan include:

Increasing the use of alternative means of transportation... and pedestrian movement, by improving and expanding facilities and services and encouraging compact, "walkable" land use patterns and project designs. (p 80)

**UTILITIES:** Available

**TRAFFIC ANALYSIS:** Gabrielle Drive and Blackstone Road are local streets

**PUBLIC SERVICE:** City of Lincoln fire and police

## **ANALYSIS:**

1. The Subdivision Ordinance requires pedestrian way easements on all blocks that are longer than 1000 feet. The purpose of this is to improve pedestrian circulation through the neighborhood without creating additional cross streets.
2. The pedestrian way easement was not labeled on the Vintage Heights 6<sup>th</sup> Addition final plat, although the resolution did require its construction at the same time as Blackstone Road was paved.
3. The resolution for Vintage Heights 7<sup>th</sup> Addition required the construction of the sidewalk in the pedestrian way easement at the same time as the paving of Gabrielle Drive.
4. Neither portion of the sidewalk was constructed at the time required by the resolution approving the final plat and as set forth in the land subdivision ordinance.
5. Building and Safety issued a building permit on Lot 9, Block 2, Vintage Heights 7<sup>th</sup> Addition in October 2000. The building plans did not meet the requirements of §27.71.230 - that buildings be at least 10 feet from a pedestrian way easement. The house abuts the easement.
6. There is no longer a viable alternative location for the easement because houses have been constructed on those lots.
7. A pedestrian way easement is necessary in this block; however, the unusual circumstances noted above make it infeasible to construct a sidewalk now.

Prepared by:

Jason Reynolds  
Planner

# WAIVER OF DESIGN STANDARDS NO. 02004

## PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 3, 2002

Members present: Newman, Duvall, Bills-Strand, Steward, Carlson, Krieser, Larson and Schwinn; Taylor absent.

Staff recommendation: Approval.

### Proponents

1. **Mark Hunzeker** appeared on behalf of **Hampton Development Services**. He has been here several times to request releases of these easements and he does not believe he has ever seen anything quite like this one. In this case, there was a preliminary plat that showed the pedestrian way easement; we had a final plat in one addition which showed the pedestrian way easement and a second final plat that did not show it. There are four houses now built on either side of what was going to be a pedestrian way easement, none of which have appropriate setbacks from the walkway. There is no feasible alternative for construction of this pedestrian way. Staff has reviewed this very carefully because they generally do not look with favor on relinquishing these easements, but the staff agrees that there is not a good alternative for placing this easement.

Carlson does not understand how this happened. Hunzeker thought these easements were always labeled on a final plat. Apparently, either that has not been uniformly the case or it wasn't necessarily a requirement that was made with the final plat. He believes that it is now a requirement and he agrees that it should be. If they are going to be labeled for the purpose of code enforcement they need to be on the final plat because Codes do not look at the preliminary plat.

Hunzeker further explained that ordinarily, the easements are 5' on either side of the property line, which would put it right up against the house in this case. Newman would rather see some sort of sidewalk put through in some way, by a variance or something. Hunzeker understands, but it is literally 5' away from the property line with the house, which would mean that the sidewalk could be under the eaves of the house. The other side would be the same situation. You are allowed to have the eaves of the house stick into the side yard setback up to within 2-3' of the property line. You could literally be under the eaves if you were on the pedestrian way in this situation.

There was no testimony in opposition.

Carlson asked staff for a response as to how this occurred and how we can assure that it will not happen again. Jason Reynolds of Planning staff stated that the pedestrian way easement is to be labeled on the final plat. In this situation, it was labeled on the 7<sup>th</sup> Addition but was not correctly labeled on the 6<sup>th</sup> Addition. The sidewalk needs to be put in at the time of the street paving as that is what was required by the resolution, but it was not done. When building permits are reviewed, we need to catch the pedestrian way easement and there needs to be a 10' setback from the easement, which would make it 15' from the property line.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 3, 2002

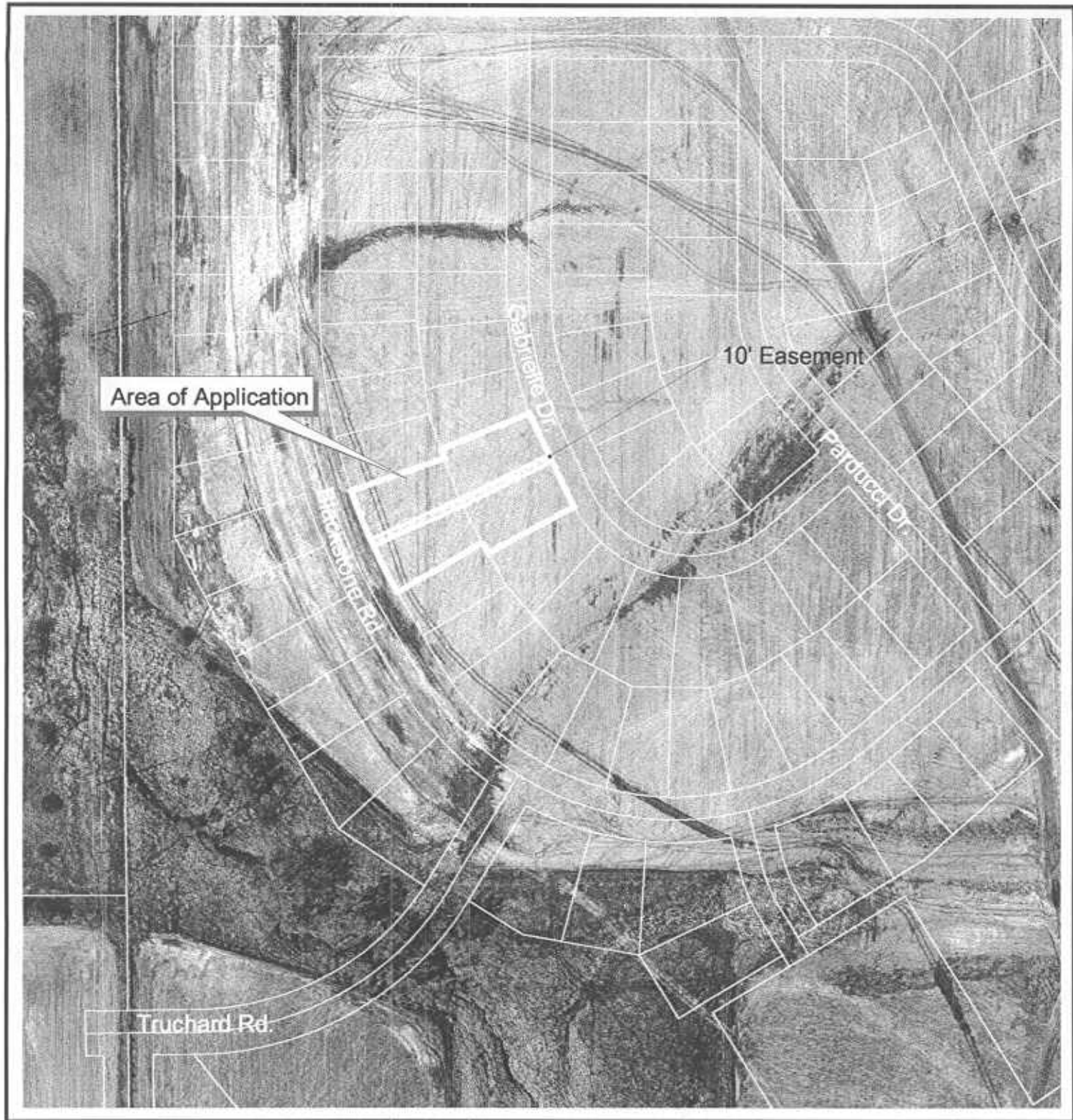
Duvall moved approval, seconded by Steward.

Newman stated that she will reluctantly vote in favor, but she does not want it to happen again.

Schwinn commented that he has never seen this occur before.

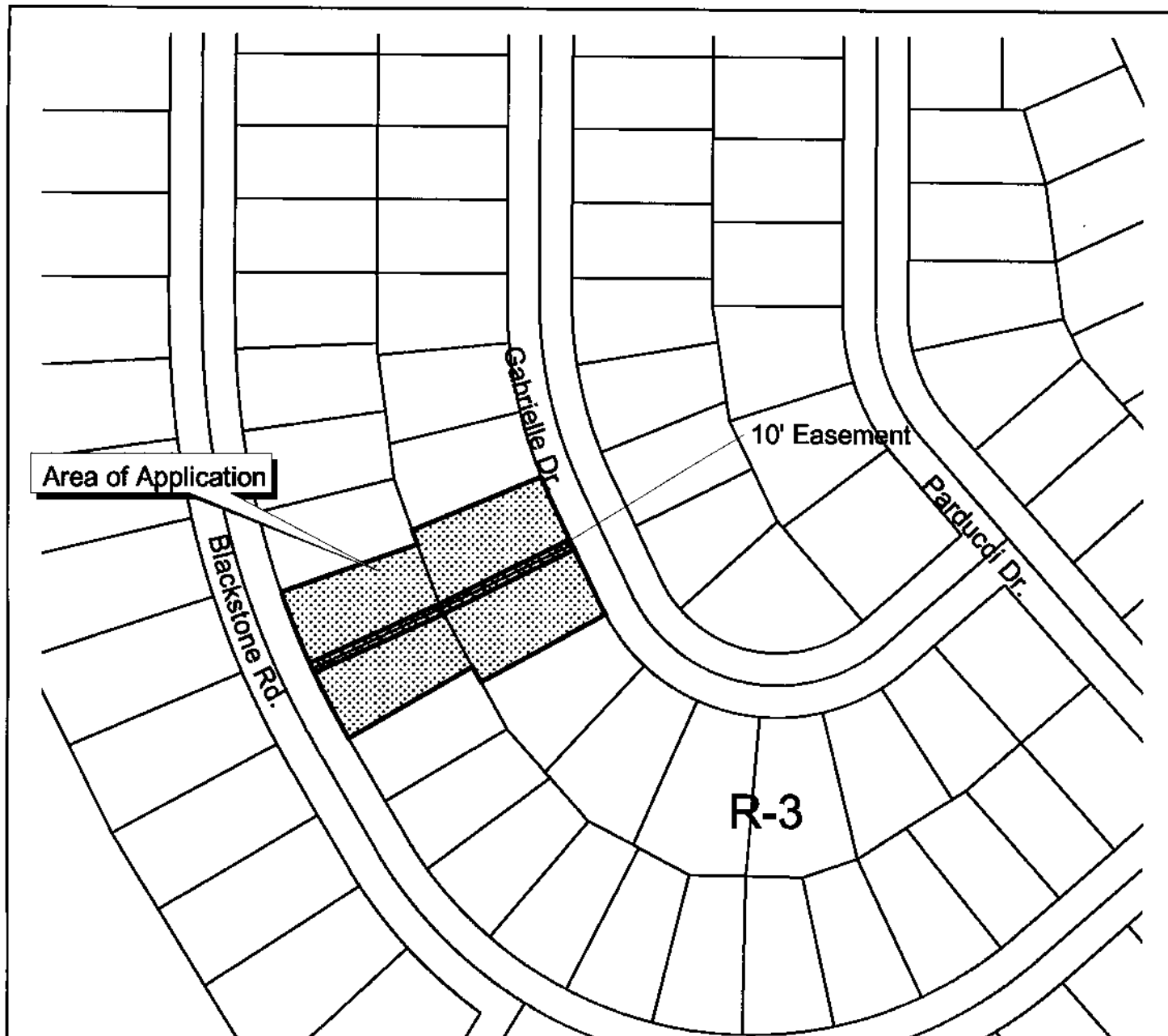
Newman further commented that if ever there was a need for a pedestrian easement, this is the place.

Motion for approval carried 8-0: Newman, Duvall, Bills-Strand, Steward, Carlson, Krieser, Larson and Schwinn voting 'yes'; Taylor absent.



**Waiver of Design Standards #02004  
Benziger Dr. & Blackstone Rd.**



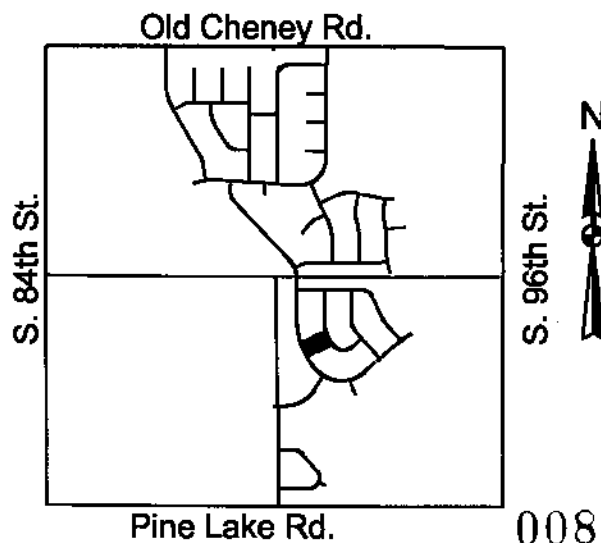
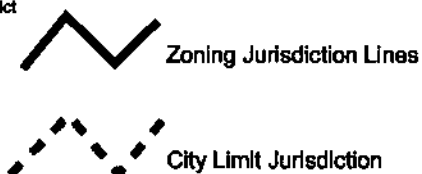


## Waiver of Design Standards #02004 Benziger Dr. & Blackstone Rd.

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 14 T9N R7E



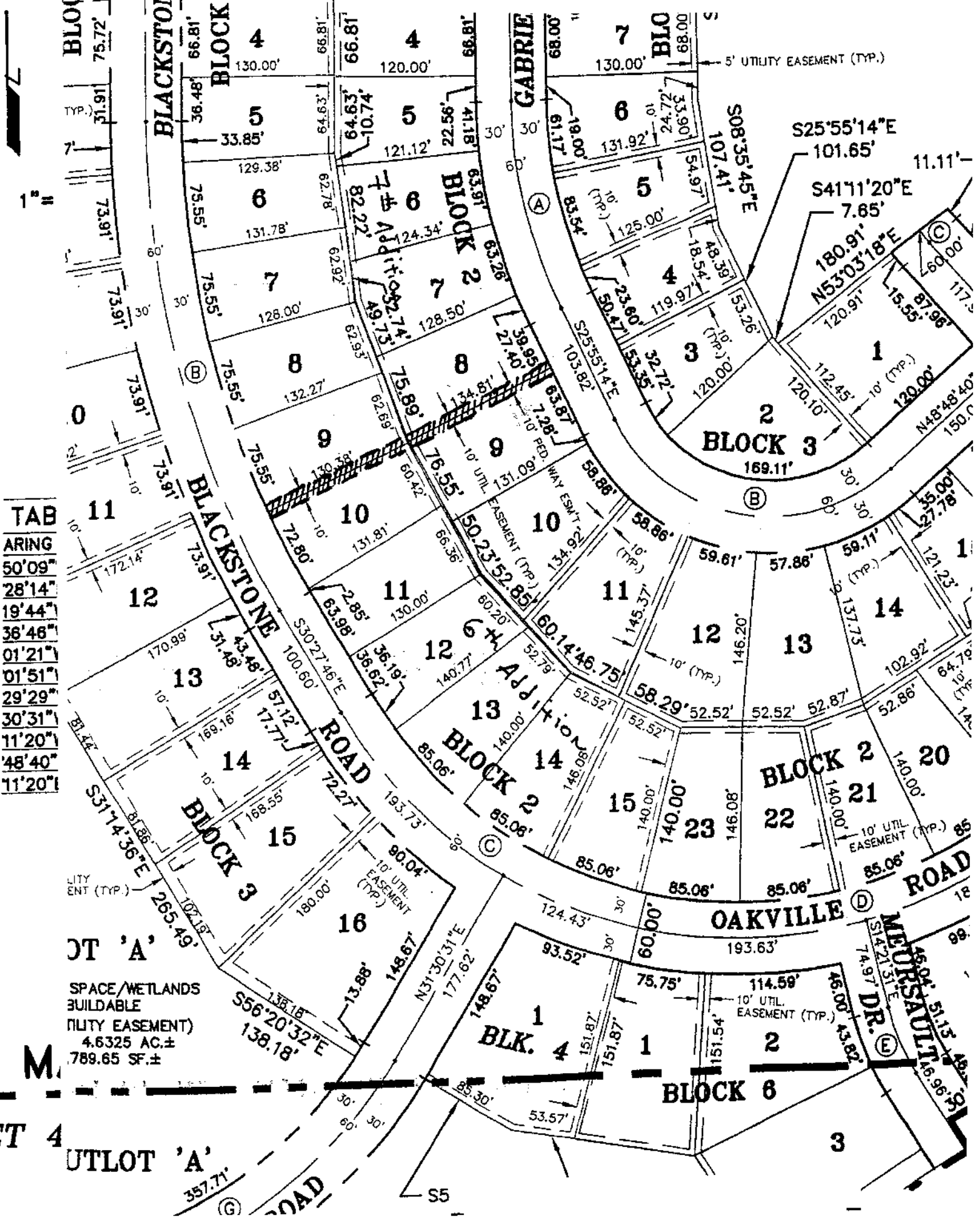


1" = 7'

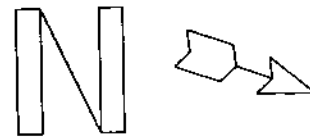
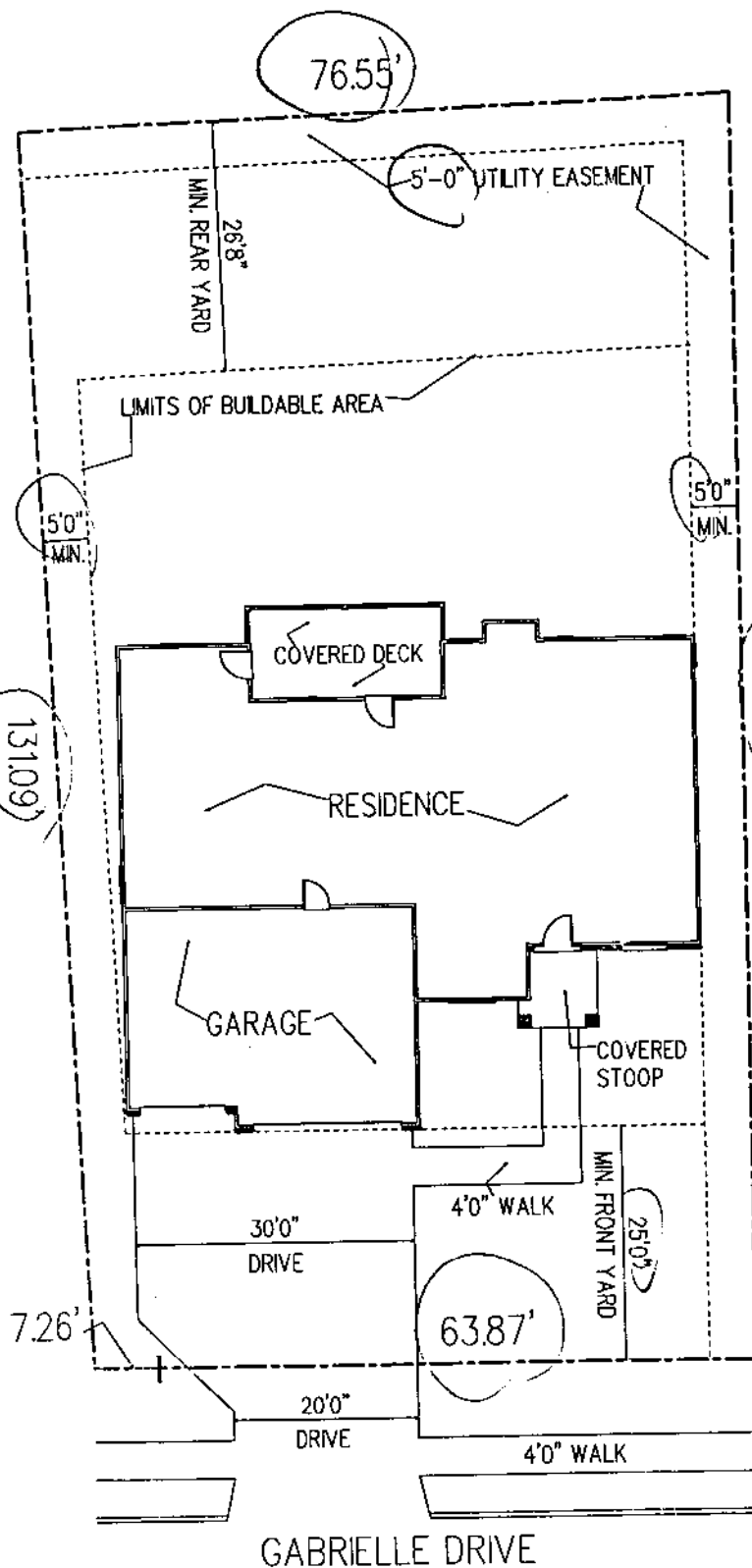
TAB	ARING
50'09"	
28'14"	
19'44"	
36'46"	
01'21"	
01'51"	
29'29"	
30'31"	
11'20"	
48'40"	
11'20"	

SPACE/WETLANDS  
BUILDABLE  
(UTILITY EASEMENT)  
4.6325 AC.±  
789.65 SF.±

UTLOT 'A'



B0003681



NOTE:  
BUILDING MAY BE LOCATED  
ANYWHERE WITHIN BUILDABLE  
AREA OF LOT.

LEGAL:  
VINTAGE HEIGHTS  
7TH ADDITION  
BLOCK #2  
LOT #9

*P-3 zone  
20' Front  
5' side  
26.8' rear*

PLOT PLAN

SCALE: 1" = 20'-0"

**APPROVED**  
NEW VENTURES  
Custom home design

LINCOLNSHIRE SQUARE  
1610 South 70th Avenue  
Lincoln, NE 68506  
483-1986  
APPROVED DRAWING  
NOT TO BE KEPT ON THE  
CONSTRUCTION PREMISES  
AT ALL TIMES DURING  
THE WORK AUTH-  
ORIZED BY D & G CONS IN PROGRESS  
AND SHALL BE OPEN TO  
NV 34 BOARD BY PUBLIC  
OFFICIALS.

DATE

REVIEWER

REMARKS